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UNCLAS ANTANANARIVO 000693

SENSITIVE
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STATE FOR AF/E - MBEYZEROV
STATE PLEASE PASS TO USTR FOR WJACKSON

E.O. 12958: N/A
TAGS: ECON ETRD MA
SUBJECT: AGOA SUSPENSION COULD JEOPARDIZE 80 PERCENT OF SEA
SHIPPING TO MADAGASCAR

¶11. (SBU) Summary: On September 29, DCM met with Maersk Madagascar (MM) local lawyer and sales manager to discuss a commercial dispute that occurred between MM and a local firm. MM sales manager advised that if this legal problem is not resolved and AGOA is suspended, Maersk may withdraw from Madagascar, leaving exporters high and dry and further precipitating the ongoing economic decline of this isolated island nation. End summary.

MM General Manager Accused of Slander

¶12. (SBU) Since 2005, MM has been involved in a legal case with a local company called Genie. The initial case was about the attempted theft of five containers of flour with false documents, for which MM lodged a complaint against Genie who MM believed was involved in the attempted theft. However, the investigating judge ordered MM to retract its complaint, and Genie then filed a complaint against MM for slander and the loss of the cargo. The case, which MM views as pure harassment, led to a recent committal order against MM's expatriate General Manager. On September 28, the MM General Manager fled the country after a series of press articles reported that he was to be arrested for defamation and calumny regarding the owner of Genie. With regard to this legal concern, it appears that the Ministry of Justice is by commission or omission tacitly urging an out-of-court settlement to the benefit of the local businessman.

Arbitration court not an option and other lawless activities noted:

¶13. (SBU) MM's lawyer said that it is a pity that the Arbitration Office - initially a USAID sponsored program - is no longer operational because, in the past, it was very helpful in resolving commercial disputes. The office, he noted, is now moribund. He also noted the theft/seizure by government security forces of three container loads of Maersk-shipped liquor from the port before they even cleared customs. He noted wryly that not even the Maersk-owned containers had been returned.

Maersk: Key Player in Malagasy Economy

¶14. (SBU) In terms of market share, Maersk Line is the leader of containerized transportation to and from Madagascar, with 35 per cent of Maersk's export volume and 60 per cent of its revenue being AGOA-related. In terms of containers, these exports represent between 1,200 and 1,500 Forty Foot Equivalent Units (FFE). MM claims to transport more than 90 percent of all AGOA exports from Madagascar. The sales manager said that AGOA exports have a ripple effect for the company and local economy since the generated revenue allows MM to offer concessionary rates to artisanal and spice exports. For imports, AGOA-related materials represent from 2,000 FFE to 2,500 FFE per year.

¶15. (SBU) Given these figures, the continuing court case tolerated by local authorities, and the harassment of key MM personnel in connection with it, the sales manager said that if AGOA-related operations cease, MM would seriously consider terminating its operations in Madagascar.

¶6. (SBU) Based on similar legal problems that Mediterranean Shipping Company (MSC, MM's low-end competition) has encountered, the MM sales rep and lawyer said there is a possibility that before they realize what they have perhaps unwittingly engineered, the HAT may see both firms suspend or terminate their operations in the country.

If that happens, it could mean a halt of 80 percent of all shipping in and out of Madagascar.

Comment: Rule of Law Woes and Consequences

¶7. (SBU) This further failure by Malagasy authorities to respect the rule of law risks driving away important contributors to the Malagasy economy, and thereby creating a significant snowball effect if AGOA eligibility is suspended. As the AOGA decision becomes closer, and the mounting, negative effects of rising uncertainty increase further, we may become aware of other secondary impacts negatively affecting this downward spiral. End comment.

MARQUARDT